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PP

v.

WONG SHEW CHOONG

B

HIGH COURT MALAYA, SHAH ALAM
NALLINI PATHMANATHAN JC
[CRIMINAL APPEAL NO: 45-101-2006]
3 SEPTEMBER 2007

C

CRIMINAL PROCEDURE: *Sentence - Principles of sentencing - Mitigating circumstances - Plea of guilty - First time offender - Accused having record of impeccable scholastic and extra-curricular activities - Public interest to be foremost consideration - Court to consider gravity of offence - Trauma and strain suffered by victim's family - Court to weigh public interest against interests of offender*

D

CRIMINAL PROCEDURE: *Sentence - Plea of guilty as mitigating factor - Plea of guilt made at earliest opportunity - Accused not entitled to discount or mitigation as of right - In extremely grave offences public interest to outweigh plea of guilt as a mitigating factor*

E

CRIMINAL PROCEDURE: *Sentence - Kidnapping - Circumstances of offence committed not so grave as to justify plea of guilt being ousted in favour of public interest - Discount of one-third given - Term of imprisonment of three years imposed*

F

The accused pleaded guilty to a charge under s. 365 of the Penal Code for having kidnapped a boy and holding him for ransom of RM1 milllion. The victim had managed to escape and later the accused surrendered himself at a police station and was fully co-operative with the police. Learned counsel for the accused, in mitigation urged the court to take into consideration that the accused pleaded guilty at the earliest available opportunity. He explained that the accused was remorseful and did not want to put the victim through the trauma of a protracted trial. The accused was an excellent scholar and sportsman and held a degree in Business Management. At the time of commission of the offence, the accused was the Trade Marketing Manager of Phillip Morris, the cigarette manufacturers, earning RM12,000 a month. The accused was aged thirty-four with a wife and two children and had no previous conviction. Learned counsel explained that the accused had found himself in such a degree of debt to loan sharks, who had started threatening his family, that he decided to abduct the victim. The learned deputy public prosecutor on the other hand highlighted the trauma that the victim's family went through, given that the sum of money sought was well beyond their means.

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Held:

(1) The foremost consideration in arriving at a suitable sentence is that of public interest. The sentence should serve to deter him from ever contemplating such an act of abduction in the future; it should also reflect the gravity with which society views the commission of this offence, and it should in an objective and dispassionate manner accord recognition to the terrifying trauma and strain suffered by the victim's family. This consideration of public interest then has to be weighed against the interests of the offender. (para 13)

(2) The fact that that accused was a first offender and had no previous convictions merited consideration. The fact of his impeccable scholastic and extra-curricular activities, well into adulthood including the fact that he donated blood and had continued to contribute to society positively, even while imprisoned, cannot be completely ignored. (para 14)

(3) The plea of guilt by the accused made at the earliest opportunity he had was a mitigating factor. However, not in every case that a discount or mitigation is entitled as of right. Where the offence is extremely grave, public interest outweighs the plea of guilt as a mitigating factor, in which instance it will not be taken into account. In the instant case, the circumstances were not so grave as to justify the plea of guilt being ousted in favour of public interest. A discount in the region of one-third was therefore appropriate. (paras 15, 17, 18 & 19)

(4) The appropriate sentence to be imposed is a term of imprisonment of three years, which was to take effect from the date of arrest. (para 22)

Case(s) referred to:

Sau Soo Kim v. PP [1975] 1 LNS 158 FC ***(refd)***

Mohd Abdullah Ang Swee Kang v. PP [1987] 2 CLJ 405; [1987] CLJ (Rep) 209 SC ***(refd)***

PP v. Ravindran & Ors [1992] 1 LNS 47 HC ***(refd)***

PP v. Ng Lai Huat & Ors [1990] 1 CLJ 1190; [1990] 2 CLJ (Rep) 774 HC ***(refd)***

Teh Yew Whatt v. PP [1957] 1 LNS 86 HC ***(refd)***

Legislation referred to:

Kidnapping Act 1961, s. 3

Penal Code, s. 365

For the prosecution - Wan Shaharuddin Wan Ladin; DPP

For the respondent - Gooi Soon Seng; M/s Gooi & Azura

Reported by Amutha Suppayah

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JUDGMENT

Nallini Pathmanathan JC:

Introduction

B **[1]** Wong Shew Choong ('the accused') was originally charged on 31 October 2006 under s. 3 of the Kidnapping Act 1961 (Revised 1989). On 23 August 2007 however, this matter was called up to enable the prosecution to tender an alternative charge under s. 365 of the Penal Code against the accused. The alternative charge, which is in Malay C reads as follows:

> … Bahawa kamu pada 23 Sept 2006 jam lebih kurang 1p.m. di Jalan USJ 3 dalam kawasan perumahan USJ 3, Subang Jaya, dalam daerah Petaling, di dalam Negeri Selangor, bagi mendapatkan wang tebusan telah menculik Tan Sze The victim serta mengurungnya dengan salah D sehingga tuntutan tebusan dibayar dan oleh yang demikian kamu telah melakukan kesalahan di bawah Seksyen 365, Kanun Keseksaan dan boleh dihukum di bawah peruntukan yang sama.

[2] I ascertained that the accused fully understood the nature and the consequences of the alternative plea and was satisfied that he did.

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Statement Of Facts

[3] Briefly the facts are that on 23 September 2006 at about 9am, the accused left his home in his motorcar. The registration card for the vehicle, exh. "P11" shows that the vehicle is a Toyota Corolla Altis. F About forty minutes later he was driving in Taman Ehsan Kepong. After having a drink at a stall, the accused carried on driving until he reached USJ4. He drove around this area until he reached USJ3. In USJ3, the accused saw a Chinese boy. Something moved him to abduct the boy. The accused then stopped his vehicle and called out to the boy, G indicating that his car had stalled and he required help. The boy, Tan Sze The victim ('the victim') came up to the accused's car and asked how he could help. The accused asked Shuan to help him to repair the back seat of the vehicle from the boot of the car. The victim entered the boot and tried to help to repair the back seat. The accused then H immediately closed the boot and drove away as quickly as possible. The victim tried to open the boot but failed, because it had been locked by the accused. The victim then called his father on his hand phone and informed him that he had been abducted by a Chinese man.

[4] When they arrived at Desa Man, Kepong, the accused instructed I the victim to surrender his hand phone to him. The victim was then tied up with brown cellophane tape. The victim was then taken to a two storey terrace house in Kepong where he was tied to the edge of the steps.

[5] The accused then purchased food for the victim. At about 6.30pm the accused called the victim's mother on the telephone and informed her that the victim had been kidnapped. The accused then called the victim's father and demanded a sum of RM1 million to be paid to him, if he wanted his son back. The accused and the victim slept the night in the terrace house. In the morning the accused woke the victim, tied him up and went out to get some breakfast for him. During this time, the victim managed to free himself and escape from the house. He procured the assistance of neighbours who called for the police.

[6] The police went to the accused's home but he was not there. Instead, he surrendered himself at a police station and was fully co-operative with the police. He admitted that he had abducted the victim for the ransom monies of RM1 million. These then are the facts relating to the offence which the accused freely admitted to.

[7] I have read the facts, seen the exhibits and considered the evidence as a whole and am satisfied that an offence under s. 365 PC was committed, which is punishable under the same section.

[8] Having heard and understood these facts and having examined the exhibits, the accused admitted to the same and pleaded guilty. This was done voluntarily in full comprehension of the consequences of the plea. I therefore accepted his plea of guilt and convicted him.

Accused's Plea In Mitigation

[9] Learned counsel for the accused made a persuasive plea in mitigation, urging the court to take into consideration as a mitigating factor the plea of guilt of the accused at the earliest available opportunity. He explained that the accused was remorseful and did not want to put the victim through the trauma of a protracted trial. Mr. Gooi went on to outline the antecedent background of the accused. The meticulously compiled records of his education show that the accused was an excellent scholar and sportsman, having studied at one of the premier schools in the country, the Victoria Institute. He went on to procure a degree in Business Management from Monash University. At the time of commission of the offence, the accused was the Trade Marketing Manager of Phillip Morris, the cigarette manufacturers, earning RM12,000 a month. He had no previous conviction of any kind. The accused is aged thirty-four and has a wife and two children.

[10] More significantly, Mr. Gooi explained why the accused, with his unassailable records had suddenly abducted a child for ransom. The reason was that he had found himself in such a degree of debt to loan

sharks, who had started threatening his family, that he decided to carry out this indefensible act of abducting the victim for a sum of RM1 million.

Prosecution's Response

[11] The learned deputy public prosecutor with his usual objectivity and candour submitted that the accused had no previous convictions and agreed that the testimonials of the accused were impressive. However he urged that the court look within the four walls of s. 365 PC in determining a suitable sentence. He pointed out that the victim was an intelligent boy who managed to escape from the calamity that befell him. He highlighted the trauma that the victim's family went through when they learnt that their son had been kidnapped, particularly given the sum of money sought, which was well beyond their means. He therefore asked the court to impose a sentence which conveyed a message to society at large that reflected the gravity of this offence.

Sentence

Public Interest

[12] In deciding on a suitable sentence, this court is bound by the provisions of s. 365 PC which sets out the statutory ambit within which a sentence may be imposed. The section provides for a term of imprisonment of up to seven years and/or a fine. There is no fixed rule or policy that stipulates the number of years to be imposed. Instead the courts are allowed a free and flexible discretion to determine an appropriate punishment with the proviso that such discretion must be exercised judicially.

[13] The foremost consideration that I have kept in my mind in arriving at a suitable sentence is that of public interest. As stated by Hilberry J. in *R v. Ball* a court should seek to enforce criminal law not only with the object of punishing crime, but also in the hope of preventing it. And that public interest is best served if the offender is induced to turn from criminal ways to honest living. In the context of this offender, the sentence should serve to deter him from ever contemplating such an act of abduction in the future; it should also reflect the gravity with which society views the commission of this offence, and it should in an objective and dispassionate manner accord recognition to the terrifying trauma and strain suffered by the victim's family as a consequence of the abduction and the demand for a ransom of monies well beyond their reach. This consideration of public interest then has to be weighed against the interests of the offender.

Mitigating Factors

Antecedents Of The Accused

[14] The fact that that the accused is a first offender and has no previous convictions merits consideration. The fact of his impeccable scholastic and extra-curricular activities, well into adulthood including the fact that he donates blood and has and continues to contribute to society positively, even while imprisoned, cannot be completely ignored. It does however beg the question, why and how, a well-meaning and well-educated citizen of the country would or could bring himself to commit such an atrocious crime which caused unparalleled trauma to the victim and his family. Given the accused's background as outlined, it appears to be a shocking descent into the world of crime, even if only for a short period of time. He must therefore bear the consequences of such a momentary lapse/descent. Any term of imprisonment must therefore reflect this.

Plea Of Guilt

[15] The plea of guilt by the accused made at the earliest opportunity he had is a mitigating factor, as stipulated in both *Sau Soo Kim v. Public Prosecutor* [1975] 1 LNS 158 and *Mohd Abdullah Ang Swee Kang v. PP* [1987] 2 CLJ 405; [1987] CLJ (Rep) 209. In the latter case, Mohd. Azmi SCJ (as he then was) stated as follows:

> ... It is generally accepted that the extent of the reduction on account of plea of guilty would be between one-quarter and one-third of what otherwise would have been the sentence ... .

[16] This practice has been followed in numerous cases thereafter, including *PP v. Ravindran & Ors* [1992] 1 LNS 47, where Visu Sinnadurai J. pointed out that the credit or discount to be given in favour of the accused person is not on the maximum sentence imposed by law but on the sentence that is likely to have been passed if the accused had claimed trial and been found guilty.

[17] As against this, the courts have also recognized that it is not in every case that a discount or mitigation is entitled as of right. Where the offence is extremely grave, the courts have determined that public interest outweighs the plea of guilt as a mitigating factor, in which instance it will not be taken into account.

[18] A plea of guilt is generally recognized as a factor justifying a reduction in sentence because it avoids the need for a trial, *Sau Soo Kim v. Public Prosecutor* [1975] 1 LNS 158 thus enabling other cases to be disposed of more expeditiously. It also saves a considerable amount of judicial time and costs besides saving victims and witnesses from the

concern of having to give evidence at trial. It also shortens the gap between the time of preferment of the charge and sentence, thereby alleviating delays and encouraging the effective administration of justice. In the instant case, the circumstances are not so grave as to justify the plea of guilt being ousted in favour of public interest.

Stage Of Proceedings At Which The Accused Pleaded Guilty

[19] The accused in the instant case pleaded guilty as soon as he reasonably could and well before the dates set for the trial of this offence. A discount in the region of one-third is therefore appropriate.

Comparison Of Sentences In Other Cases For A Similar Offence

[20] There are very few cases reported in the law journals on offences under s. 365 of the PC. Learned counsel for the accused submitted as such, but went on to add that in his years of experience, the courts have generally imposed a term of about five years for offences of this nature. Further research that I undertook bore out the truth of this submission. In *PP v. Ng Lai Huat & Ors* [1990] 1 CLJ 1190; [1990] 2 CLJ (Rep) 774, Faiza Thamby Chik J imposed sentences of five years and three years (to those who were less culpable) in respect of a similar offence. In *Teh Yew Whatt v. PP* [1957] 1 LNS 86 the appellate court in reviewing a sentence imposed on a juvenile who pleaded guilty to a charge under s. 365 PC, ordered that he be detained in Henry Gurney School until he attained the age of 21 years. The other offenders in the case had been sentenced to terms of imprisonment of three years each.

[21] These few cases suggest that the courts have imposed a term of about three to five years for offences of this nature, depending on the extent of culpability of each particular offender.

[22] If the accused had not pleaded guilty at this early stage, and the matter had gone through a full trial, it is likely that I would have imposed a sentence of five years, taking into account public interest, the gravity of the offence, the facts of the case, the antecedents of the accused and his co-operation with the police. Taking into further consideration the plea of guilt and the stage at which he has pleaded guilty, the appropriate sentence to be imposed on him in this case is a term of imprisonment of three years, which is to take effect from the date of arrest.